HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.1324 of 2006

Between:

Dr. Anil Kolly and two others

... Appellants

And

The Jubilee Hills Co-operative House Building Society, Road No. 14, Jubilee Hill, Hyderabad, rep., by its President and two others

... Respondents

::JUDGMENT::

Counsel for the appellants : Shri V. Rajagopal Reddy

Counsel for respondent Nos.1 and 2: Shri T. Rajendra Prasad

December 20, 2006

Per G.S. Singhvi, CJ

This appeal filed by Dr. Anil Kolly and two others against order dated 23-11-2006 passed by the learned Single Judge in Writ Petition No. 23655 of 2006 is a part of the chain of litigation in which the parties are involved for quite sometime.

It is borne out from the record that notice for conducting elections to the Managing Committee of Jubilee Hills Cooperative

House Building Society (respondent No. 1 herein) was ordered on 19-10-2005. After scrutiny and withdrawal of nominations, only 15 persons were found to be eligible to contest elections. On 29-10-2005, the Election Officer declared all of them as elected. In the meanwhile, the appellants filed Writ Petition No. 22928 of 2005 for quashing the election notice by contending that the Election Officer did not have the jurisdiction to notify election without convening a general body meeting and without giving opportunity to pay the deficit share capital to all the members of the society. They filed another Writ Petition No.23274 of 2005 for quashing the action of respondent Nos. 2 and 3 to reject the nominations of those who were impeaded as private respondents in that petition. Both the writ petitions were dismissed by the learned Single Judge with liberty to the petitioners to challenge the election before the Andhra Pradesh Cooperative Tribunal (for short, 'the Tribunal'). Writ Appeal Nos. 406 and 407 of 2006 preferred by the appellants were dismissed by the Division Bench on 20-04-2006. Thereafter, the appellants filed a petition before the Tribunal for quashing the election held on 29-10-2005. The same has been registered as O.P No. 60 of 2006 and is pending before the Tribunal.

Respondent Nos. 1 and 2 filed I.A No. 661 of 2006 with the prayer that issue relating to limitation should be decided as a preliminary issue. By an order dated 10-10-2006, the Tribunal dismissed the application by observing that the issue of limitation will be adjudicated after giving opportunity to the parties to adduce evidence.

Respondent Nos. 1 and 2 challenged the order of the Tribunal by filing writ petition under Article 226 of the Constitution of India. By the impugned order, the learned Single Judge allowed the writ

petition and directed the Tribunal to take up issue No. 5 and decide the same on its own merits.

Shri V. Rajagopala Reddy, learned counsel for the appellants argued and we find considerable merit in his argument that while directing the Tribunal to decide issue No. 5, the learned Single Judge was not at all justified in virtually pronouncing on the merits of that issue by observing that the time spent by the appellants in the previous litigation cannot be excluded while computing the period of limitation.

We have serious reservation on the justification of the High Court entertaining a writ petition filed against an interlocutory order passed by the Tribunal refusing to entertain the prayer made by the parties for adjudication of the issue of limitation as a preliminary issue. But even if there was some justification on the part of the learned Single Judge to entertain the writ petition filed by respondent Nos. 1 and 2 against order dated 10-10-2006 passed by the Tribunal and the learned Single Judge felt convinced that the Tribunal should be called upon to decide the issue of limitation as a preliminary issue, there was no justification whatsoever for making observations on the merits of that issue, which are bound to prejudice any adjudication by the Tribunal. It needs no emphasis that being a quasi judicial authority, the Tribunal is always subject to the supervisory jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India and any observation made by the High Court albeit with the rider that the same will not influence the Tribunal is bound to affect adjudication of the matter by such authority or the Tribunal.

At this stage, Shri T. Rajendra Prasad, learned counsel for respondent Nos. 1 and 2 fairly stated that the Division Bench may declare the observations made by the learned Single Judge on the

merits of the issue of limitation as inoperative and ineffective and direct the Tribunal to decide the issue of limitation independently.

We appreciate the stand taken by the learned counsel and dispose of the appeal with the following directions:

1) The Tribunal shall take up the issue of limitation and decide the same within a period of two weeks from today without entertaining any request for adjournment, which may be made by or on behalf of either of the parties.

2) Neither of the parties shall rely on the order passed by the learned Single Jude in Writ Petition No.23655 of 2006 during the course of hearing before the Tribunal and the Tribunal shall decide the issue of limitation without taking into account and without being influenced by the observations made by the learned Single Judge.

3) If the issue of limitation is decided in favour of respondent Nos. 1 and 2, then there will no necessity of deciding the other issues on merits. If on the other hand, the issue of limitation is decided against respondent Nos. 1 and 2, then the Tribunal shall finally adjudicate the O.P within a period of next four weeks.

As a sequel to disposal of the appeal, WAMP No.2813 of 2006 filed by the appellants for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

December 20, 2006

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